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Supreme Court, U.S.
FILED
AUG 31 1994
OFFICE OF THE CLERK

No. 94-250

In The

Supreme Court of the United States

October Term, 1994

IN RE: WILLIAM H. FORMAN, JR.

Petition for a Writ of Certiorari to the
Supreme Court of Louisiana

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Respondent submits that the real issues for review are as follows:

1) Whether this Court should disturb the State's fact finding in a June 12, 1990 Public Reprimand where Mr. Forman failed to seek timely redress.

2) Whether disciplining a lawyer for filing a meritless and harassing lawsuit in bad faith deprives the lawyer of his right to access to the Courts under the Constitution of the State of Louisiana and/or the United States Constitution.

3) Whether this Court should reverse the facts found by the state disciplinary agency and state Supreme Court.

4) Whether this Court should reverse the interpretation of a state statute made by the state Supreme Court.

TABLE OF CONTENTS

Page

Questions Presented for Review . . . i

Table of Contents ii

Table of Authorities iii

Citations of Opinions and Judgments Below 1

Introduction 1

Statement of the Case 2

Summary of Argument 6

I. Count I (Ms. Reed). 6

II. Count II (Ms. Wright) 7

Argument 8

I. Count I (Ms. Reed). 8

II. Count II (Ms. Wright) 18

Conclusion 25

TABLE OF AUTHORITIES

Page

U.S. Supreme Court Rule 13.1 . . . 6, 9

Louisiana Sate Bar Associations Rules of Professional Conduct:

Rule 1.15 21

Rule 1.16 21

Rule 3.1 . . . . . 18, 22

Rule 3.4 (c) 18

Rule 4.4 . . . . . 18, 22

Rule 8.4 (a)(c)(d) 18, 22

LSA-R.S. 9:5001 . . . . . 22, 23

CITATIONS OF OPINIONS AND JUDGMENTS BELOW

The decisions of the Louisiana Supreme Court, the Report of the Disciplinary Board to the Louisiana Supreme Court, the Report of Hearing Committee No. 11 to the Disciplinary Board, and the Formal Charges filed against Mr. Forman are contained in the appendices, Petition for Writ of Certiorari, designated Appendix A, Appendix B, Appendix C, Appendix D, and Appendix E respectively.

INTRODUCTION

Mr. Forman is dissatisfied with the decision of the Supreme Court of Louisiana suspending him from the practice of law for six months for two separate instances

of misconduct. While cloaking his arguments in the garb of constitutional rights, Mr. Forman basically seeks to have this Court reverse the fact finding of the State Disciplinary Agency and the State Supreme Court, and to interpret a state statute in a manner inconsistent with the decision of the State Supreme Court. Respondent suggests that the petition is flawed both factually and legally. Respondent herein respectfully responds to Mr. Forman's contentions and requests that the Petition For Writ Certiorari be denied.

STATEMENT OF THE CASE

In late 1987 or early 1988, Mr. Forman wrongfully retained property belonging his client, Ms. Wright, and used

that property as leverage to attempt to settle a fee dispute with Ms. Wright. Mr. Forman asserted a bogus privilege or lien in order to wrongfully hold his client's property hostage.

On March 30, 1990, the Committee on Professional Responsibility (hereinafter COPR) advised Mr. Forman that it intended to publicly reprimand him for misconduct, including charging a client, Ms. Reed, an excessive fee. Mr. Forman appealed to the Louisiana Supreme Court, which affirmed the decision. The Reprimand issued on June 12, 1990. Mr. Forman filed extensive pleadings with the Louisiana Supreme Court, attempting to cancel the Reprimand and/or cause it to remain unpublished. He was unsuccessful, and did not seek writs to this Court. In May of 1990, after the notice of intent to issue a Public

Reprimand, but prior to its June 12, 1990 issuance, Mr. Forman sued Ms. Reed for attorney's fees plus damages.

Formal Charges, two counts, were filed on March 15, 1991. Hearing was held on July 24, 1991 in New Orleans. Hearing Committee No. 11's November 15, 1991 Report found Mr. Forman not guilty in Count I, guilty in Count II, and recommended a reprimand.

The Disciplinary Board considered briefs and oral arguments. Their August 31, 1993 Report found Mr. Forman guilty of misconduct in both counts and recommended a three month suspension.

The Louisiana Supreme Court also considered briefs and oral arguments on Mr. Forman's objections to the Board's Report, and Disciplinary Counsel's objection to the insufficiency of the

recommended sanction. The Louisiana Supreme Court, on March 18, 1994, held that Mr. Forman was guilty of two counts of misconduct: (1) filing a suit in bad faith against a former client to collect a partial fee, after withdrawing his demand for the fee when the COPR had ruled that the fee was excessive; and (2) failing to return another client's papers and stocks when the client refused to pay more than the originally quoted fee, using the client's property as leverage in the fee dispute, and returning them only after the client sued. Application for rehearing was denied, and Mr. Forman applied for the writs to this Honorable Court.

SUMMARY OF ARGUMENT

I. COUNT I (Ms. Reed)

Mr. Forman complains that the June 12, 1990 Public Reprimand by the COPR (Appendix C, pp.6a and 7a of Mr. Forman's petition) is vague. Mr. Forman extensively, and unsuccessfully, litigated the issuance of the Public Reprimand before the Louisiana Supreme Court in 1990. He did not then seek review by this Court. Mr. Forman now wishes to have this Court review the 1990 Public Reprimand. His request is untimely, U.S. Supreme Court Rule 13.1. The facts set forth by Mr. Forman are incomplete and incorrect. Mr. Forman's memorandum and sworn affidavit, filed in the child support proceeding, state that all of the time was spent on the child support issue. Mr. Forman and his counsel in the COPR

proceeding filed letters withdrawing the demand for fees from Ms. Reed, prior to the decision to issue a Public Reprimand. Mr. Forman in effect argues that to discipline him for filing a harassing lawsuit in bad faith deprives him of his constitutional right of access to the courts. Neither the Louisiana nor the Federal Constitution provide anyone with a right to file lawsuits in bad faith in order to harass or intimidate another person. Redress of grievances and harassment are not synonyms.

II. COUNT II (Ms. Wright)

The facts set forth by Mr. Forman are incomplete and inaccurate. Ms. Wright entrusted stock certificates and other papers to Mr. Forman for use in preparing pleadings in her late husband's succession

Mr. Forman charged Ms. Wright about twice the fee that he had told her he would charge. When she refused to pay the double fee, Mr. Forman refused to return her papers. He argued that a state statute gave him a lien on Ms. Wright's papers. That statute is not applicable to these facts. The Louisiana Supreme Court was not impressed with Mr. Forman's urging of this bogus lien, and did not interpret the statute the way Mr. Forman desired. Mr. Forman inappropriately seeks a more favorable interpretation of the state's statute from this Court.

ARGUMENT

I. COUNT I (Ms. Reed)

The Public Reprimand was issued on June 12, 1990. Mr. Forman extensively

litigated the question of the appropriateness of that reprimand and its publication, in the Louisiana Supreme Court in 1990. He did not seek writs from this Court at that time. U.S. Supreme Court Rule 13.1 provides a ninety day period, from the finality of a State Supreme Court decision, for one to seek writs of certiorari. The ninety day period has long since past. Mr. Forman nonetheless seeks to have this Court review the facts found in that matter. It is suggested that it would be inappropriate for this Court to engage in fact finding in a State disciplinary case wherein the facts have been adjudicated by the State Supreme Court's disciplinary system, particularly when, as here, a lawyer was given a full opportunity to present evidence and to further litigate

the matter on appeal. If Mr. Forman thought that the COPR opinion was vague, he should have sought relief from this Court in a timely fashion. He did not do so. Furthermore, given the close time proximity of the Public Reprimand and the harassing lawsuit, it cannot be reasonably argued that Mr. Forman did not know of the significance of one to the other.

The facts presented in Mr. Forman's Petition for writs are incomplete and inaccurate.

Mr. Forman sued Ms. Reed for fees after being advised by the COPR that they intended to Publicly Reprimand him for, among other findings, charging Ms. Reed an excessive fee. The text of the Public Reprimand is contained in Appendix C, pp.6a and 7a of Mr. Forman's petition.

On March 30, 1990, the COPR notified

Mr. Forman of its intent to issue a Public Reprimand. He appealed. The Public Reprimand was affirmed by the Louisiana Supreme Court, and was issued on June 12, 1990. In May of 1990, after the notice of intent to issue a Public Reprimand, but prior to its issuance, Mr. Forman sued Ms. Reed for $3,185.00 in fees, plus damages for his loss of earnings due to the time spent pursuing his claim against her for fees. Mr. Forman engaged in subsequent unsuccessful attempts to cancel the Public Reprimand.

Mr. Forman was awarded $1,000.00 in attorney's fees by the trial court in Ms. Reed's past due child support matter. at one time he claimed fees of $6,513.00. The checks for the past due child support and the fee total $2,879.25 ($1,879.25 in past due support). Charging a needy client

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$6,513.00 in attorney's fees to collect $1,879.25 in past due child support is unreasonable.

On October 13, 1988, Mr. Forman submitted his memorandum for attorney's fees in the past due child support matter to the trial court. The memorandum and accompanying affidavit clearly establish that he sought attorney's fees only for his efforts in the past due child support matter. Mr. Forman's affidavit states that the records he attaches " . . . show the time that he actually spent in connection with said cause of action", referring to the past due child support matter. The records list 59 1/2 hours at $75.00 an hour ($4,462.50) claimed as fees in the past due child support matter. The trial court determined that $1,000.00 was a reasonable attorney's fee.

On November 7, 1989, after the COPR hearing on the excessive fee issue, but prior to the COPR's decision, Mr. Forman sent a demand letter to Ms. Reed demanding $6,513.00 in fees, with credit for the $1,000.00 awarded by the trial court, and stating that he was prepared to sue for $5,513.00. The demand included the $4,462.50 submitted in Mr. Forman's memorandum and affidavit to the trial court, plus $2,050.50 in charges allegedly incurred after October 3, 1988.

On November 22, 1989 both Mr. Forman and his attorney sent letters to the COPR withdrawing the demand letter. Mr. Forman's letter contains these statements:

> With reference to your file no. 10227-A, all demand letters to Mrs. Henrietta V. Reed are hereby withdrawn;

and,

> I do confirm withdrawal of any claim for fee that has been included in the prior

adjudication of this matter.

Mr. Forman's lawyer's letter contains this statement:

> I learned yesterday that another letter from the captioned had been mailed to the former client regarding his claim for attorney's fees. I knew nothing of this demand, and on conferring with Mr. Forman, he acknowledged that he did not intend to make claim in excess of the fee adjudicated for his increase in child support payments. His letter to that effect is to confirm his withdrawal of any additional claim for that work.

It is obvious that Mr. Forman was withdrawing any claim for the fees demanded in the November 7, 1989 letter. Mr. Forman clearly told the COPR, which was then considering its decision on the fee issue, that he was abandoning his pursuit of these fees.

Six months later, in May of 1990, after the notice of intent to issue a

Public Reprimand, but prior to its issuance, Mr. Forman sued Ms. Reed for $3,185.00 in fees, plus damages for his loss of earnings due to the time spent pursuing his claim for fees. Mr. Forman testified that he was suing Ms. Reed for fees included in his November 7, 1989 demand letter. It is suggested that suing a client for $3,185.00 in fees in a case where the client received only $1,879.25 in past due child support is unreasonable. The facts that Mr. Forman had already collected the court awarded $1,000.00 fee; had submitted a written withdrawal of all claim to the fees while the COPR was considering the disposition of misconduct involving the fees claimed; and sued to enforce his abandoned claim after the COPR decided the matter, make the suit gross misconduct. It was frivolous and harassing

for Mr. Forman to sue to recover loss of earnings occasioned by the time required for him to pursue a lawsuit for an unreasonable fee which he had already waived.

Mr. Forman's defense was that he sued for the time spent on the community property matter, not the child support matter. His sworn affidavit and memorandum are clearly antithetical to his purported defense, as are the two November 22, 1989 letters to the COPR withdrawing the November 7, 1989 demand. To credit Forman's defense one must conclude that his affidavit and memorandum to the trial court contained statements known to be untrue when made, and that the letters of November 22, 1989 were artfully designed to mislead the COPR in its consideration of allegations of misconduct against him.

His defense merited no credence.

Hearing Committee No. 11's conclusion, that it was proper for Mr. Forman to maintain the suit against Ms. Reed until his appeals from the COPR's decision were completed, both begged and ignored the question. The Board's Report corrected that error. Mr. Forman waived the fees he later sued to collect. He should not have filed the suit for that reason alone. Further, he sued after he was notified of the COPR's intention to issue a Public Reprimand, in part for charging Ms. Reed an unreasonable fee. The proper thing to do was await the conclusion of his appeals prior to even considering filing suit to enforce the abandoned fee claim. There was no question of prescription or any other basis to sue Ms. Reed, other than to harass her. He

filed the suit at his peril in clear violation of Rules 3.1, 3.4(c), 4.4, and 8.4(a)(c)(d) of the Louisiana Rules of Professional Conduct.

Mr. Forman does not have a constitutional right to file harassing lawsuits in bad faith in order to harass or intimidate former clients. Mr. Forman confuses bad faith harassment with the proper redress of grievances. The two are not synonymous.

II. COUNT II (Ms. Wright)

The facts stated by Mr. Forman in his application for writs are incomplete and inaccurate.

Mr. Forman improperly refused to return stock certificates and other papers belonging to a client in an attempt to collect a fee that the client considered

to be excessive.

Ms. Wright retained Mr. Forman to handle the succession of her late husband. In early 1987, she gave Mr. Forman stock certificates and other papers to be used to prepare the succession documents. The November 6, 1987 judgment placed Ms. Wright in possession of the succession property, including the stock. Mr. Forman's bill was $3,579.73. Ms. Wright had previously been told that the succession would take about 20 hours at $80.00 an hour ($1,600.00). Accordingly, she paid Mr. Forman $1,692.23, and refused to pay the remainder of his bill. On January 5, 1988, Ms. Wright wrote to Mr. Forman requesting the return of her stock certificates and other papers. On January 18, 1988, Mr. Forman replied that it was customary for such property to be returned

in person and that a lawsuit for the rest of the fee would be filed. On February 18, 1988, Mr. Forman sued Ms. Wright for $1,887.50. A "notice of privilege" notarized by Mr. Forman, was filed with the clerk of court. On March 8, 1988, a pleading was filed by Ms. Wright's attorney noting that Mr. Forman had wrongfully withheld her property. In a September 27, 1988 deposition, Mr. Forman testified:

> Q. Let me ask you about the documents you have in your possession. You have some stock certificates and other things in your possession for Mrs. Wright?
> A. Yes.
> Q. Are you prepared to turn those over today?
> A. We've put an attachment on them.

On October 19, 1988, Ms. Wright sued Mr. Forman alleging in part that he improperly refused to return her stock certificates

and car title and improperly placed a lien upon her home. Subsequently, the documents were returned to Ms. Wright by mail.

Mr. Forman contended that his letter of January 18, 1988 satisfied his obligations under Rule 1.15 and 1.16. Hearing Committee No. 11 correctly held that the Rules do not require the client to request their documents, that Mr. Forman was obligated to promptly deliver them to Ms. Wright. While the judgment of possession was entered on November 6, 1987, Mr. Forman had not returned the documents or stocks to Ms. Wright as of January 18, 1988. Mr. Forman's failure to return the documents was intentional.

Mr. Forman improperly asserted a right to possession and dominion over Ms. Wright's property as a means to further his position in the fee dispute. A lawyer

cannot hold his client's property hostage in order to win a fee dispute. Such conduct serves no substantial purpose other than to harass or burden and is a violation of Rules 3.1 and 4.4. It was also dishonest for Mr. Forman to assert a bogus privilege in order to hold his client's property hostage, a violation of Rule 8.4(c).

The statute relied upon Mr. Forman to establish his bogus lien is LSA-R.S. 9:5001 which, at the applicable time stated: "A special privilege is hereby granted to attorneys at law for the amount of their professional fees on all judgments obtained by them, and on the property recovered thereby, either as plaintiff or defendant, to take rank as a first privilege thereon." The statute permits an attorney to secure his

contingent or other fee from the proceeds of a lawsuit. The facts in this case clearly establish that the property which Mr. Forman received from his client, the stock certificates and other papers belonging to the client, were not "property recovered" by any litigation or any judgment against any adverse party. Similarly, the statute does not grant Mr. Forman any right to file a lien upon the immovable property (real estate) of his client. Mr. Forman was charged with failing to return to his client his client's property, not the fee portion of litigation proceeds.

Mr. Forman unsuccessfully argued his interpretation of LSA-R.S. 9:5001, that it covered the property in question, to the Louisiana Supreme Court. The Louisiana Supreme Court decision does not support

Mr. Forman's interpretation. While a discussion of the Louisiana Civil Code provisions on successions, particularly seizin and related concepts, might be informative, the issue clearly is a matter of interpreting a state statute. Mr. Forman basically argues that the Louisiana Supreme Court has misinterpreted Louisiana law. He wishes to have this Court reinterpret state law in his favor. It is suggested that it is inappropriate for this Court to do so under the "Erie doctrine" and related cases. Mr. Forman argues that other states have a statute which accomplishes Mr. Forman's purpose. The fact that another state, or states, have a statute which accomplishes this, does not require the State of Louisiana to adopt such a statute. It does not require the Louisiana Supreme Court to interpret

the statutes of Louisiana in Mr. Forman's favor. The State of Louisiana is clearly entitled to determine what its own statutes mean, via interpretation by the Supreme Court of Louisiana, independent of Mr. Forman's wishes.

CONCLUSION

There is nothing in the petition sub judice requiring this Court's attention. There is no conflict among the circuits, there is no Federal question, no Federal Statute interpreted, and, no proper constitutional question presented. The facts asserted by Mr. Forman are incomplete and inaccurate. The issues raised by Mr. Forman involve the fact finding and interpretation of state law by

the Louisiana Supreme Court and its disciplinary system. Mr. Forman's petition is devoid of merit and should be denied.

Respectfully submitted,

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